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Holding Co. Inc.; K-M Industries Holding Co.
Inc. ESOP Plan Committee; and CIG ESOP Plan Committee

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

THOMAS FERNANDEZ et al.,)	Case No. C 06-07339 MJJ
)	
Plaintiffs,)	STIPULATION RE: INITIAL EXAMINATION
)	OF DOCUMENTS AND NON-WAIVER OF
vs.)	PRIVILEGE; [PROPOSED] ORDER
)	
K-M INDUSTRIES HOLDING CO., INC, et al.)	
)	
Defendants.)	
)	
)	
)	

WHEREAS, Defendant K-M Industries Holding Co., Inc. ("KMH") desires to produce to the Plaintiffs for examination and copying pursuant to Plaintiffs' Rule 34 Request for Documents the non-privileged documents contained in the approximately 102 boxes of documents located in the San Carlos Asbestos Document Repository, located in San Carlos, California;

WHEREAS, Plaintiffs and Defendant KMH desire to make discovery in this litigation efficient and cost effective, and desire to minimize the cost and delays that may be caused by the need for KMH to carefully review these documents before they are produced in order to prevent the

1 waiver of any appropriate claim that certain of these documents are subject to the attorney-client
2 and/or the work product privilege, or any other privilege or protection that may exist with respect to
3 these documents; and

4 WHEREAS, Plaintiffs and Defendant KMH desire to prevent any production of documents
5 contained in the San Carlos Asbestos Document Repository from effecting an unintentional waiver
6 of the attorney-client and/or the work product privilege, or any other privilege or protection that may
7 exist with respect to these documents;

8 Accordingly, IT IS HEREBY AGREED AND STIPULATED by the Plaintiffs and
9 Defendant KMH through their counsel of record that:

10 1. Upon the entry of an Order of the Court approving this Stipulation, Defendant KMH
11 will make the documents contained in the San Carlos Asbestos Document Repository available for
12 examination by the Plaintiffs in San Carlos at mutually agreed upon date and time;

13 2. After Plaintiffs' initial examination of the documents contained in the San Carlos
14 Asbestos Documents Repository, Plaintiffs may designate any documents contained in the
15 Repository for production under Plaintiffs' Rule 34 Request for Documents;

16 3. After review and designation by Plaintiffs, Defendant KMH will review the
17 designated documents for privilege and for confidentiality under the Protective Order entered in this
18 case, and pursuant to the provisions of that Protective Order, will produce copies of all non-
19 privileged documents that were designated for production by the Plaintiffs, along with a Privilege
20 Log listing the documents being withheld on the ground of privilege;

21 4. The fact that Defendant KMH provided these documents for initial examination
22 pursuant to this Stipulation will not be deemed, and will not be under law, a waiver of the attorney-
23 client and/or the work product privilege, or any other privilege or protection that may exist with
24 respect to any of these documents;

25 5. If after production of copies of the documents designated for production by the
26 Plaintiffs, Defendant KMH determines that copies of documents subject to the attorney-client and/or
27 the work product privilege, or any other privilege or protection that may exist, have been

1 inadvertently produced to the Plaintiffs, such production will not be deemed, and will not be under
2 law, a waiver of such privilege or protection with respect to these documents;

3 6. If KMH determines that copies of documents subject to the attorney-client and/or the
4 work product privilege, or any other privilege or protection that may exist, have been inadvertently
5 produced to the Plaintiffs pursuant to this Stipulation, upon being informed of this, Plaintiffs will
6 promptly return to Defendant KMH all copies of such documents, and may not use such documents
7 or the information contained in such documents until such claim of privilege is resolved. If
8 Plaintiffs have disclosed such documents or information to others prior to being notified of the
9 inadvertent disclosure, Plaintiffs will take reasonable steps to retrieve such documents.

10 7. By entering into this Stipulation, Plaintiffs do not waive any rights that they would
11 otherwise have had to challenge the withholding of any documents by Defendant KMH pursuant to
12 a claim of privilege, and may challenge any such claim of privilege, including a claim made with
13 respect to any documents inadvertently produced pursuant to this Stipulation.

14 8. Nothing in this Stipulation shall alter any party's right to challenge, under the terms
15 of the Stipulated Protective Order, the designation of any document as "Confidential" or "Highly
16 Confidential."

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18 DATED: June 14, 2007

LOVITT & HANNAN, INC.

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21 By: _____
22 Henry I. Bornstein
23 Attorneys for Defendants K-M Industries Holding
24 Co., Inc.; K-M Industries Holding Co., Inc. ESOP
25 Plan Committee; and CIG ESOP Plan Committee
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1 DATED: June 15, 2007

2 LEWIS, FEINBERG, LEE, RENAKER &
3 JACKSON, P.C.

4 By: 

5 Todd Jackson

6 Attorneys for Plaintiffs Thomas Fernandez and
7 Lora Smith

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10 Good cause appearing, it is APPROVED and IT IS SO ORDERED.
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15 DATED: 6/26/2007

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17 Honorable Martin J. Jenkins

18 UNITED STATES DISTRICT JUDGE
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